

**Introduced by Senator Bowen**

February 24, 2006

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An act to amend Sections 1850 and 1851 of, and to add Section 1051 to, the Probate Code, and to add Section 5372 to the Welfare and Institutions Code, relating to conservatorships.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1716, as introduced, Bowen. Conservatorships.

Existing law requires the court to review each conservatorship one year after the appointment of the conservator and biennially thereafter, except as specified. Existing law also requires the court investigator to visit the conservatee when the court review of the conservatorship is required, and to determine, among other things, whether the present conservator is acting in the best interests of the conservatee.

This bill would instead require the court to review each conservatorship within one year after the appointment of the conservator and at least biennially thereafter. The bill would also revise the first provision described above to specifically authorize the court to order a review of the conservatorship at any other time.

The bill would also require the court investigator's evaluation to include the appropriateness of the conservatee's placement, the conservatee's quality of care, and the conservatee's financial condition.

The bill would also prohibit, except as specified, ex parte communications between any party or attorney for the party and the court concerning a subject raised in pleadings filed pursuant to the Probate Code, and in proceedings to establish a conservatorship for persons who are gravely disabled as a result of a mental disorder or chronic alcoholism. The bill would require the Judicial Council to adopt a rule of court to implement this provision by July 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1051 is added to the Probate Code, to  
2 read:

3 1051. (a) In the absence of a stipulation to the contrary  
4 between parties who have filed pleadings in a proceeding under  
5 this code, there shall be no ex parte communications between any  
6 party, or attorney for the party, and the court concerning a subject  
7 raised in those pleadings, except as permitted or required by law.

8 (b) Notwithstanding subdivision (a), in any case upon which  
9 the court has exercised its jurisdiction, the court may consider  
10 and take appropriate action in response to an ex parte  
11 communication regarding both of the following: (1) a fiduciary,  
12 as defined in Section 39, about the fiduciary's performance of his  
13 or her duties and responsibilities and (2) a person who is the  
14 subject of a conservatorship or guardianship proceeding under  
15 Division 4 (commencing with Section 1400) of the Probate Code.

16 (c) The Judicial Council shall, on or before July 1, 2007, adopt  
17 a rule of court to implement this section.

18 SEC. 2. Section 1850 of the Probate Code is amended to read:

19 1850. (a) Except as provided in subdivision (b), each  
20 conservatorship initiated pursuant to this part shall be reviewed  
21 by the court *within* one year after the appointment of the  
22 conservator and *at least* biennially thereafter. *The court may, on*  
23 *its own motion or upon request, order a review of the*  
24 *conservatorship at any other time.*

25 (b) This chapter does not apply to either of the following:

26 (1) A conservatorship for an absentee as defined in Section  
27 1403.

28 (2) A conservatorship of the estate for a nonresident of this  
29 state where the conservatee is not present in this state.

30 SEC. 3. Section 1851 of the Probate Code is amended to read:

31 1851. (a) When court review is required *pursuant to Section*  
32 *1850*, the court investigator shall visit the conservatee. The court  
33 investigator shall inform the conservatee personally that the  
34 conservatee is under a conservatorship and shall give the name of  
35 the conservator to the conservatee. The court investigator shall

determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. *In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include the appropriateness of the conservatee's placement, the conservatee's quality of care, including physical and mental treatment, and the conservatee's financial condition.* If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 4. Section 5372 is added to the Welfare and Institutions Code, to read:

1     5372. (a) The provisions of Section 1051 of the Probate  
2 Code shall apply to conservatorship established pursuant to this  
3 chapter.

4     (b) The Judicial Council shall, on or before July 1, 2007, adopt  
5 a rule of court to implement this section.

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